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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1940

No. 119

PHILIPPINE NATIONAL BANK, *Petitioner,*

—VERSUS—

PHILIPPINE TRUST COMPANY and UNION INSURANCE SOCIETY OF CANTON, LTD., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINES AND SUPPORTING BRIEF.

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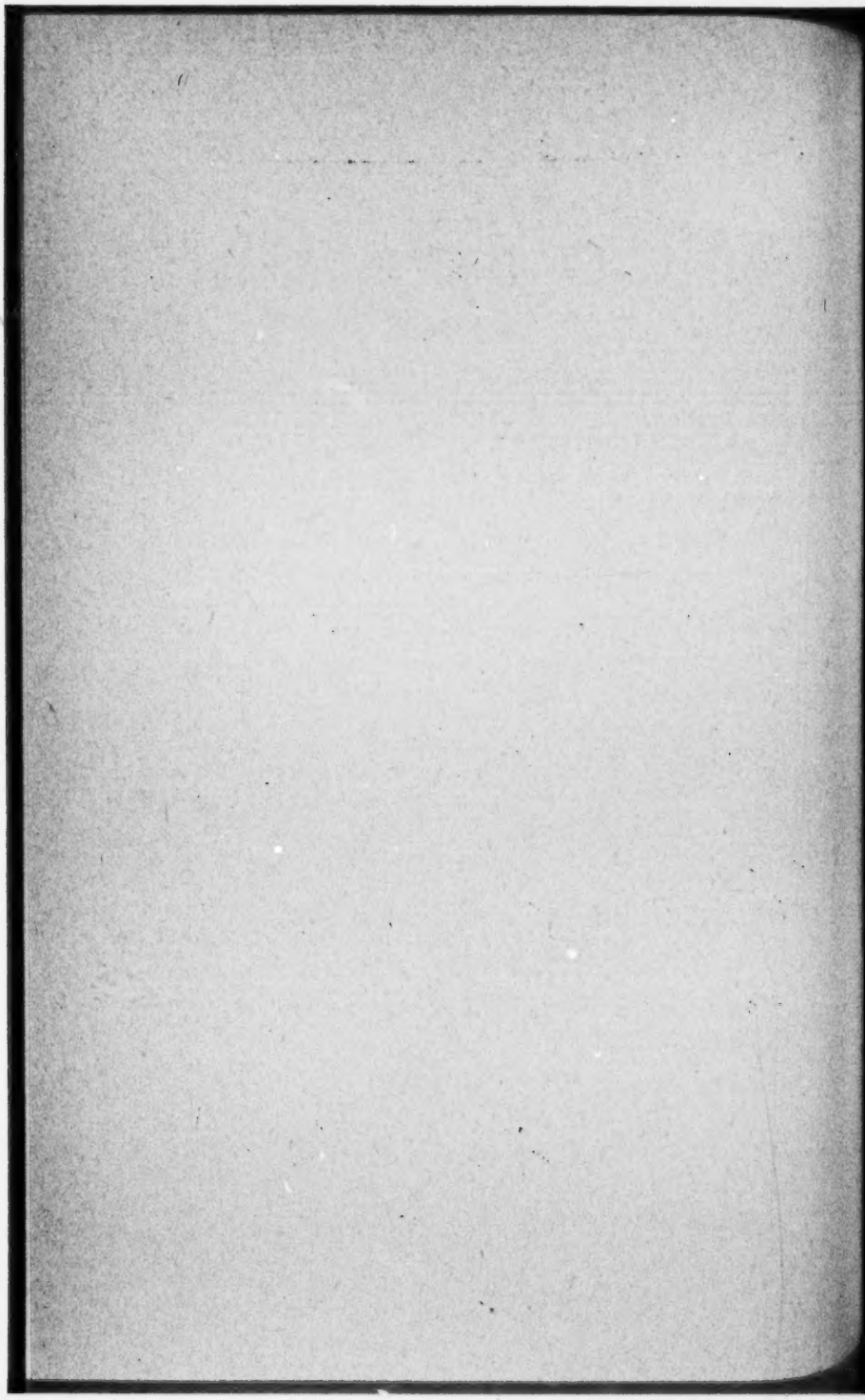

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SUPREME COURT OF THE UNITED STATES

October Term, 1940

No.

PHILIPPINE NATIONAL BANK, *Petitioner,*

—VERSUS—

PHILIPPINE TRUST COMPANY and UNION INSURANCE SOCIETY OF CANTON, LTD., *Respondents.*

PETITION FOR REVIEW ON CERTIORARI

COMES now the Philippine National Bank, hereinafter referred to as the Bank, and to this Honorable Court respectfully prays that a writ of certiorari be issued to review the judgment of the Supreme Court of the Philippines rendered in the case of the PHILIPPINE NATIONAL BANK, Plaintiff-Appellant, *vs.* PHILIPPINE TRUST COMPANY and UNION INSURANCE SOCIETY OF CANTON, LTD., Defendants-Appellees (G. R. No. 45427) affirming a decision of the Court of First Instance of Manila dismissing petitioner's amended complaint for the recovery of the sum of TWO HUNDRED FIFTY THOUSAND PESOS (₱250,000), equivalent to ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS ($125,000.00, U. S. Cy.) jointly and severally owing from respondents as damages caused by the latter's non-performance of a contract had with the petitioner, to the end that judgment

be rendered in accordance with the amended complaint.

STATEMENT OF THE MATTER INVOLVED

The facts of this case are contained in a Stipulation of Facts executed by the parties hereto (Record pages 13 to 27), and are supported by documents whose authenticity is admitted. The following is a summary of the essential facts of this case:*

1. In 1917, the Mindoro Sugar Company, hereinafter referred to as the Mindoro Sugar, issued bonds amounting to $1,500,000.00, U. S. Cy., payable with interest at the rate of 8% per annum and redeemable within twenty years thereafter, more specifically, on or before July 1, 1937 (Exh. "A", Record pages 27 to 76). The Philippine Trust Company, hereinafter referred to as the Philippine Trust, was the trustee of the properties of the Mindoro Sugar (Exh. "A", Record page 27). In 1923, the Union Insurance Society of Canton, Ltd. and other companies affiliated to and controlled by it, hereinafter referred to as the Union Insurance, were holders of the said bonds total par value of which was $1,500,000.00, United States Currency or ₱3,000,000.00, Philippine Currency (Exh. "C", Record page 80). But in 1929 the Philippine Trust already had bonds amounting to $782,000.00 and the Monte de Piedad y Caja de Ahorros, hereinafter referred to as the Monte de Piedad, held $371,000.00 worth of said bonds (Exh. "R", Record page 153).

* The underscoring and parenthetical explanations appearing in quotations from exhibits or authorities are ours, unless the contrary is expressed.

These sums amounted to $1,153,000.00; the rest of said bonds, worth $447,000.00, continued to be held by the Union Insurance.

2. In 1921 the Mindoro Sugar obtained ₱250,000.00 ($125,000.00, United States Currency) from the Bank, which sum was secured by a second mortgage constituted on the properties subject to the Deed of Trust (Exh. "B", Record page 76).

3. In 1922 the Philippine Trust took possession of the properties of the Mindoro Sugar and together with the Union Insurance and the Bank, operated the business of the said Mindoro Sugar. To this effect, Mr. O'Malley, then president of the Philippine Trust, said (Exh. "E", Record pages 97 to 101):

"It being apparent that the Company (Mindoro Sugar) would probably not meet the payment of Bond interest due June 30th, 1922, and on which the period of grace allowed under the Bond mortgage expired September 1st, 1922, the Philippine Trust Company and the Union Insurance Society of Canton, representing the holders of the bonds, signified to the Philippine National Bank their intention of executing the Bond mortgage, but at the same time suggested that, in order to prevent loss of the ₱250,000 secured by the Bank's second mortgage, we would be glad to enter into an agreement with the Bank whereby the Bank would be enabled to recover its ₱250,000, in exchange for contributing one-third of the expenses for the proper conduct of the business of the Mindoro Sugar Company until the same should be self-sustaining.

* * * * *

"The Philippine Trust Company took possession of the Mindoro Sugar Company's property in Mindoro, under terms of the Bond mortgage, in September, 1922, and has since been operating the same in conjunction with the Bank and the Union Insurance Society of Canton.

* * * * *

"The 1922-23 crop, estimated at 86,000 piculs, is expected to produce sufficient to repay us the expenses of that crop and at the same time largely finance the planting of the 1923-24 crop, which is estimated will produce not less than 200,000 piculs of sugar, the proceeds of which, after repaying us for all expenses in connection therewith, and planting a still large crop for the following year, will undoubtedly permit of making a substantial payment on account of the Philippine National Bank's second mortgage of ₱250,000.00."

4. The agreement for the joint operation of the Mindoro Sugar affairs was signed on January 9, 1923 (Exh. "C", Record pages 80 to 84). With respect to the second mortgage in favor of the Bank, Exhibit "C" states as follows (Record page 82):

"That the Bank agrees to proceed immediately to the foreclosure of its mortgage and either bid the property in for the amount of the claim when sold, or to join with the other two parties in bidding it in, in the name of the San Jose Development Co. If the Bank bids the property in, it agrees to transfer its title to the San Jose Development Company so organized for the sum so paid, and to take in payment a second mortgage on the property for said amount."

5. In 1924, because of the new policy enunciated by the Government of the Philippines of divorcing itself from private business, the Bank suggested and secured its separation from the enterprise of financing the Mindoro Sugar affairs. The letter of respondents dated June 17, 1924 expresses the sentiment which predominated among petitioner and respondents (Exh. "F-1", Record pages 103 to 104):

"17th June, 1924

"Messrs. Philippine National Bank,
Manila, P. I.

"Dear Sirs:

"Referring to our conference with your Mr. Beam regarding Mindoro Sugar Company affairs, we are agreeable in principle to the proposition submitted by him as follows:

"1. *That we and our associates take over all rights of the Philippine National Bank under the second mortgage executed in its favor* by the Mindoro Sugar Co.;

"2. *That we pay the Philippine National Bank the amount now due on said mortgage over a period of five or six years;*

"3. That we relieve the Philippine National Bank of any obligation it has or may have to assist in the financing of Mindoro after the liquidation of the present crop. All advances made and which may be made by the National Bank on the present crop be repaid to said bank out of the proceeds of the sale of said crop;

"4. That the Philippine National Bank continue to assist in financing the crop now in the ground until it is harvested and milled.

"We will immediately submit said proposition to our principals and/or associates and will recommend its acceptance.

Very truly yours,

(Sgd.) W. D. CLIFFORD
Vice-President, Philippine Trust Co.

(Sgd.) H. HUNTER
Branch Manager, Union Insurance Society of Canton, Ltd."

The Executive officers of respondents appeared to be confident that an operation of five or six years of the properties of the Mindoro Sugar was sufficient to lift the second mortgage.

On July 16, 1924, respondents in some way modified their attitude, as appears from Exhibit "F" (Record pages 101 to 103), which reads as follows:

"Manila, P. I., July 16, 1924

"The Philippine National Bank
Manila, P. I.

"Gentlemen:

"Referring to letter addressed to you on June 17th by Mr. W. D. Clifford, Vice-President of the Philippine Trust Company, and Mr. H. Hunter, Branch Manager of the Union Insurance Society of Canton, Ltd., regarding Mindoro Sugar Company, we beg to state that *we are not agreeable to*

proposition set forth in the said letter *in the form submitted.* We are of the opinion, after receiving legal advice, that the agreement entered into on January 5, 1923, by and between the Philippine National Bank, the Union Insurance Society of Canton, Ltd., and the Philippine Trust Company regarding the financing of Mindoro is binding upon the National Bank and that it can not be relieved of its responsibility thereunder without consent of our respective companies. We are further of the opinion that the bondholders of Mindoro are under no obligation with respect to the mortgage held by the National Bank and *we cannot see our way clear to guarantee the payment of mortgage at any particular time.*

"Pursuant to the tentative proposal made to your Mr. Beam at a conference held this morning, we beg to submit herewith the following proposition in connection with Mindoro, it being understood that agreement to this proposition is subject to confirmation by our respective Board of Directors:

"We will release the Philippine National Bank of its obligation to assist in financing Mindoro after the present crop is harvested and the aforesaid agreement of January 5, 1923, shall be cancelled in so far as it affects the National Bank;

"We will further recognize the mortgage of the National Bank, and if we should sell the properties of the Mindoro Sugar Company, we will see that the purchaser makes satisfactory arrangements for the payment of the mortgage of the Philippine National Bank;

Provided always:

"1. That the Philippine National Bank will continue to advance one-third of the expenses, necessary for carrying on Mindoro until the present crop is harvested;

"2. That the proceeds derived from the sale of the sugar milled from the present crop shall be divided equally among the three parties;

"3. That if the shares of said proceeds pertaining to the National Bank should not be sufficient to cover the advances made by said Bank, we will pay to the National Bank the balance unpaid out of the 1925-26 crop;

"4. *That the foreclosure proceeding instituted by the Philippine National Bank shall remain in* status quo *with the understanding that if at any time, we, or either of us, desire it, the National Bank shall proceed to the sale of the properties under the judgment of foreclosure, or will assign the judgment to us or our nominee as we may desire.*

Very truly yours,

PHILIPPINE TRUST COMPANY
By (*Sgd.*) W. D. CLIFFORD

UNION INSURANCE SOCIETY
OF CANTON, LTD.
By (*Sgd.*) H. HUNTER"

The Bank, with the following amendments to the last two paragraphs, as per the resolution of its Board of Directors of July 14, 1924 (Exh. "G", Record pages 105 to 106):

"2. That if the share of said proceeds per-

taining to the National Bank should not be sufficient to cover the advances made by said bank, we will pay to the National Bank the balance unpaid out of the 1925-26 crop, and provided further that if the advances made for the 1923-1924 crop be not paid in full including interest, we will pay to the National Bank the balance unpaid out of the proceeds of 1924-1925 crop, and if it is not totally paid out of the crop, that same be paid out of the 1925-1926 crop.

"4. *That the foreclosure proceedings instituted by the Philippine National Bank shall remain in status quo as long as the undersigned continue financing the crop and operation of the Mindoro Sugar Estate, with the understanding that if at any time we, or either of us, desire it the National Bank shall proceed to the sale of the properties under the judgment of foreclosure, or will assign the judgment to us or our nominee as we may desire.*"

accepted the propositions advanced in Exhibit "F".

On July 23, 1924, the officers of the respondents expressed their conformity to the proposed amendments, subject however, to confirmation by their respective boards of directors, which was later given. (Exhs. "H", "I" and "I-1", Record pages 106, 108, and 109).

And on September 1, 1924, the document separating the Bank from the Mindoro Sugar business was executed (Exh. "J", Record pages 110 to 113). With reference to the Second Mortgage of $125,000.00, the document states (Record pages 111 and 113):

Now it is hereby agreed and declared by and

between all parties:

"2. The Second Mortgage of ₱250,000.00 of the Philippine National Bank to be recognized by the parties of the Second and Third parts in the event of a sale of the properties of the Mindoro Sugar Company by the said parties when provision will be made whereby the purchaser will make satisfactory arrangements for the payment of the amount of the mortgage of the Philippine National Bank.

"5. The foreclosure proceedings instituted by the Bank shall remain in status quo so long as the Philippine Trust Company and the Union Insurance Society of Canton, Ltd., continue to finance the crop and the operation of the Mindoro Sugar Estate with the understanding that if at any time the Philippine Trust Company and the Union Insurance Society of Canton, Ltd., or either one, desire it, the Bank will proceed to the sale of the properties under the judgment of foreclosure or will assign the said judgment to the Philippine Trust Company and the Union Insurance Society of Canton, Ltd.; or to either, or their nominee as they or either one may desire."

6. On May 6, 1926, the Philippine Trust, as trustee, sent the following letter to the Bank (Exh. "K", Record pages 113 to 115):

"PHILIPPINE TRUST COMPANY

Trustee for the Bondholders of the
Mindoro Sugar Company
Manila, Philippine Islands

May 6th, 1925.

"The Philippine National Bank,
Manila, P. I.

"Gentlemen:

"In order to carry out *our plans for the successful development* of the Mindoro Sugar Company properties, we wish to release the Union Insurance Society of Canton, Ltd., from the agreement of September 1st, 1924, entered into by that company, the Philippine Trust Company, and the Philippine National Bank, leaving the terms of said agreement in full force, however, as between the Philippine National Bank, the Philippine Trust Company, Trustee, and the Philippine Trust Company. This agreement, you will recall, was made pursuant to the request of the Philippine National Bank to be released from its obligation to finance under the original agreement of January 5, 1923, signed by the same parties.

"We differ with our Hongkong associates as to the policy to be followed in protecting the interest of the bondholders and *wish to be free to carry out our own ideas with regard to putting the property upon a paying basis.*

"We have completed arrangements for the continued financing of the Mindoro enterprise and to adequately secure whatever balance may be due your bank after liquidation of the crop just harvested, we shall be pleased, in addition to the protection your bank will have under the agreement referred to, to execute a mortgage in your favor on the crop now in the ground.

"Will you kindly advise us as to whether you are agreeable to our proposal.

Very truly yours,

PHILIPPINE TRUST COMPANY,
Trustee
By (Sgd.) M. H. O'MALLEY
President"

It can be gleaned from the foregoing letter that the Philippine Trust was determined to push through the rehabilitation of the Mindoro Sugar and that it had completed arrangements for the continued financing of the Mindoro Sugar.

The Bank refused to release the Union Insurance, from its obligation under Exhibit "J". (See Exh. "K-2", Record pages 121 to 122):

7. On December 27, 1928, the Philippine Trust proposed to buy the second mortgage of the Bank in the following terms (Exh. "O", Record, pages 139 to 141);

"Confirming our verbal discussion to be subject to approval of your Board of Directors, the Philippine Trust Company as trustee of the bondholders under the deed of trust executed in its favor by the Mindoro Sugar Company on the 21st day of December, 1917, hereby offers to pay ₱13,601.84 for all of your right, title and interest in and to a certain indenture of mortgage for the principal sum of ₱250,000.00 executed in your favor on the 14th day of April, 1921, by the Mindoro Sugar Company on all of its property situated in the Municipality of San Jose, province of Mindoro, * * *."

to which the Bank refused, as per the resolution of

its board of directors which reads as follows (Exh. "O-4", Record page 144):

"149. *Philippine Trust Company — Mindoro Sugar Co.*— In connection with the offer of the Philippine Trust Co., dated Dec. 27, 1928, for the purchase for the sum of ₱13,601.84 of our judgment against the Mindoro Sugar Co., covering foreclosure of our second mortgage against the property, the Board resolved that the management write the Philippine Trust Company that inasmuch as the action of this Bank has been in all respects carried out in accordance with the desires of the Trust Company we are forced to decline the offer made in their letter of Dec. 27, 1928, and that we look to them for full payment of our claim against the Mindoro Sugar Company *as contemplated in the general understanding we have had with the Trust Company.*"

8. On February 1, 1929, in consideration of the sum of ₱1.00 and other valuable considerations, the Philippine Trust transferred its credit of ₱5,500,000.00 against the Mindoro Sugar to the Archbishop of Manila (Exh. "O-A," Record page 149). To be exact, the credit transferred amounted to ₱5,490,481.25, in accordance with Annex B of Exhibit "Q" (Record pages 151-153):

Claims Assigned to
Roman Catholic Archbishop of Manila

Total advances from Oct. 7, 1922 up to Jan. 30, 1929	₱8,976,645.71	
Interest charges 8% up to Jan. 31, 1929.	1,000,711.40	
	₱9,977,357.31	₱9,977,357.31

Less:

Sales of sugar	₱4,309,752.29	
Miscellaneous	177,123.77	₱4,486,876.06
Amount assigned to R. C. A. of Manila		₱5,490,481.25

Even if the deed of transfer says that the foregoing is a "preferred claim", it can be observed that this "preferred claim" is not included as such under Section 10 of Article 2 of the Deed of Trust (Exh. "A", page 27).

9. On April 1, 1929, the Philippine Trust resigned as trustee, *and on the same day*, the Philippine Trust and the Monte de Piedad, as holders of the majority of the outstanding bonds, elected the Archbishop of Manila as trustee (Exh. "R", Record pages 153 to 155) who accepted the election on the same date (Exh. "S", Record pages 155 to 157) and *on the same date*, that is, April 1, 1929, announced the sale of the Mindoro Sugar properties (Exhs. "L-3," "L-4," and "L-5," Record pages 125 to 130).

10. The sale was to be held before the Justice of the Peace of the Municipality of San Jose Mindoro, Philippines, on May 1, 1929, at 9:00 o'clock A. M., and under the following conditions (Exh. "L-3," Record pages 125 to 130):

"Said sale shall be made for cash to the highest bidder but subject to obligations which shall be assumed by the purchaser as follows:

Roman Catholic Archbishop of Manila	₱5,549,340.84

Installment and interest due Philippine Government on account of Friar land sale Certificate No. 2 .	240,857.22
Philippine Trust Company	777,126.26
Bondholders — Principal and interest	3,303,739.20
Total	₱9,861,063.52

"The right is reserved to reject any bid."

The Bank protested the sale in that it did not provide for the payment of the Bank's second mortgage (Exhs. "L", "L-1," and "L-2," Record pages 122 to 125). The records of the case do not show why the sale was not made on the date announced.

11. On July 14, 1929, the Archbishop of Manila resigned as trustee and on the same date the Philippine Trust and the Monte de Piedad elected Messrs. Francisco Ortigas, Leopoldo Kahn, Wenceslao Trinidad, Joseph E. H. Stevenot and Fulgencio Borromeo as trustees (Exh. "T", Record page 157) who forthwith accepted their position (Exh. "U", Record page 160):

On August 26, 1929 the new trustees re-announced the sale of the properties of the Mindoro Sugar to be made before the Justice of the Peace of San Jose, Mindoro, Philippines, on November 4, 1929 at 9:00 A. M., under new and altered conditions, and as in the previous notices of sale, without making any provision for the payment of the Bank's second mortgage. The conditions of the sale were as follows (Exh. "M", Record pages 131 to 136):

"The terms and conditions upon which said sale

shall be made are as follows:

1. That there now exist the following obligations:

1. Installment and interest due Philippine Government on account of Friar Land sale Certificate No. 2....	₱ 233,768.00
2. Roman Catholic Archbishop of Manila	5,539,340.84
3. Philippine Trust Company..	777,126.26
4. Bondholders-Principal and interest	3,303,739.20

"Said sale shall be made to the highest and best bidder, but subject to the obligation to the Philippine Government of Two Hundred Thirty-Eight Thousand Seven Hundred Sixty-eight (₱238,768.00) Pesos with such interest as may be due after September 30, 1929, at the rate of four (4%) per cent per annum (above mentioned), which shall be assumed by the purchaser; and

"2. The purchaser shall also agree to purchase and take over from the trustees all merchandise, stores, fertilizer and so forth on hand at the date of the sale at cost price and under such conditions as the board of trustees may agree upon.

The right is reserved to reject any bid."

On the date announced, the Justice of the Peace of San Jose, Mindoro, adjudicated the properties for the sum of ₱3,000,000.00, equivalent to $1,500,000.00, U. S. Cy., to the Archbishop of Manila who was the highest bidder at the said sale, but who, nevertheless, did not pay any cash as appears

from a provision of the Deed of Sale (Exh. "V", Record page 162, 164):

"I further certify that the said purchaser, THE ROMAN CATHOLIC ARCHBISHOP OF MANILA is the highest and best bidder and being the holder of a first lien in the sum of more than FIVE MILLION PESOS (P5,000,000.00) did not pay the sum of THREE MILLION PESOS (P3,000,000,00) as the sale price of the said property, and I have issued to him this certificate under the guarantees prescribed by law."

It should be noted that the "first lien" mentioned in the afore-quoted paragraph of the Deed of Sale does not appear to be registered in the Registry of Deeds.

12. In the Stipulation of Facts there appears the following (No. 16, Record page 19):

"16. It is stipulated that there was no provision made for the recognition or payment of the second mortgage of plaintiff in the sale of the properties of the Mindoro Sugar Company by said Board of Trustees under the Deed of Trust as disclosed by Exhibits "M" and "N" hereof.

"It is further stipulated that after the month of April, 1929, neither of the defendonts further financed the crops or the operation of the Mindoro Sugar Estate.

"It is further stipulated that the defendants have no notice to plaintiff of the cessation of the financing of the crops or operations of the Mindoro Sugar Estate * * *.

"It is further stipulated that the plaintiff never executed the judgment of foreclosure (Exh. "D-1"

hereof) by the sale of the properties of the Mindoro Sugar Company thereunder and never collected the amount of said second mortgage or any part thereof.

"It is further stipulated that if the Articles of Incorporation of the San Jose Development Co., mentioned in said agreement of January 5, 1923 (Exhibit "C" hereof) were ever drafted, that prospective corporation was never capitalized and never functioned."

And in No. 20 of the Stipulation of Facts it is further stated (Record, page 23):

"It is stipulated that the sums due from the Mindoro Sugar Company and secured by said Deed of Trust at the time of its foreclosure were as recited in paragraph '4' of the reamended answer of the defendants, and that the sales price of Three Million (₱3,000,000) Pesos bid on the property to the Mindoro Sugar Company at the time of said sale on November 4, 1929 was applied on account of the indebtedness of Five Million, Five Hundred Thirty-Nine Thousand Three Hundred Forty and 84/100 (₱5,539,340.84) Pesos due to the Roman Catholic Archbishop of Manila, and that none of the other creditors mentioned in said paragraph '4' of the reamended answer received any part of the sales price of said properties."

The list of the debts of the Mindoro Sugar appearing in paragraph 4 of the reamended answer of the respondents is as follows (Record page 25):

"1. Roman Catholic Arcbishop of Manila ..... ₱5,539,340.84

2. Installment and interest due Philippine Government on account of Friar Land Sale, Certificate No. 2.	240,857.22
3. Philippine Trust Company for advance	777,126.26
4. Bondholders, principal and interest	3,303,739.20
Total.....	₱9,861,063.52"

SUMMARY OF ESSENTIAL FACTS

Limiting ourselves to the very essential facts as above narrated, the case may thus be succinctly stated:

Respondents suggested that "in order to prevent loss of the ₱250,000 secured by the Bank's second mortgage, we would be glad to enter into an agreement with the Bank whereby the Bank would be enabled to recover its ₱250,000 ($125,000.00 U. S. Cy.), in exchange for contributing one-third of the expenses for the proper conduct of the business of the Mindoro Sugar until the same should be self-sustaining, and with the further understanding that the Bank would participate to the extent of one third (1/3) of any profits that might to realized out of the operation." (Exh. "E", Record page 97).

When the Bank was allowed to leave the operation of the Mindoro Sugar, the respective officers of respondents said that "we will pay the Philippine National Bank the amount now due over a period of five or six years" (Exh. "F-1". Record page 103). But later on respondents did not want to confirm the said proposition in the "form submitted" because "we can not see our way clear to guarantee the said mort-

gage at any particular time" (Exh. "F", Record page 101), so that they instead advanced the following proposition:

"We will further recognize the mortgage of the National Bank, and, if we should sell the properties of the Mindoro Sugar Company, we will see that the purchase makes satisfactory arrangements for the payment of the mortgage of the Philippine National Bank:"

which was accepted by the Bank (Exhs. "G", "H" and "I-1", Record pages 105, 106 and 109). When Exhibit "J" was drafted, the foregoing understanding was expressed in the language quoted on pages 9 and 10 of this petition.

On May 6, 1926, the Philippine Trust "in order to carry out" their "plans for the successful development of the Mindoro Sugar Co. properties" and confirming that "we have completed arrangements for the continued financing of the Mindoro Sugar Company," and alleging "that we differ from our Hongkong associates as to the policy to be followed in protecting the interest of the bondholders" asked of the Bank that the Union Insurance be released from its obligation under the agreement of September 1, 1924, or Exhibit "J". (Exh. "K", Record, page 113). But the Bank denied this because it felt that it should "insist on the terms of the existing agreement and should see to it that they strictly comply with its terms" (Exh. "K-2", Record page 121).

On December 27, 1928, the Philippine Trust offered to buy the second mortgage of ₱250,000.00 ($125,000.00) U. S. Cy. of the Bank for only ₱13,601.84, (Exh. "O", Record page 139) which of-

fer was forthwith rejected by the Bank. (Exh. "O-4", Record page 144).

On February 1, 1929, in consideration of ₱1.00 and other valuable considerations, the Philippine Trust transferred to the Archbishop of Manila its credit of ₱5,500,000.00, and on the same date the respondents elected the latter as trustee, who announced the sale of the properties on the same date (Exhs. "Q-A", "R" and "L-3", Record pages 149, 153 and 125-130). On June 14, 1929, the Archbishop resigned as trustee, and on the same date the respondents elected as trustees Messrs. Francisco Ortigas, et al., (Exh. "T", Record page 157), upon whose petition the Justice of the Peace of San Jose, Mindoro, sold the Mindoro Sugar properties (Exh. "V").The sale was made over and above the protest of the Bank (Exhs. "L-1" and "1-2", Record pages 123, 124).

Respondents, notwithstanding the control which they had over the Mindoro Sugar affairs, did not comply with their contractual obligation to make provision whereby the purchaser was to make satisfactory arrangements of the payment of the mortgage of the Bank (Exh. "J", Nos. 2 & 5, Record pages 110 and 113), as a consequence of which, the Bank was not able to collect its mortgage credit of ₱250,000.00 with stipulated annual interest of 9%, (Exh. "B", Record, page 76).

THE DECISIONS OF THE COURT OF FIRST INSTANCE OF MANILA AND OF THE SUPREME COURT

The Court of First Instance of Manila absolved the defendants of the complaint, on the ground that

the sale was not made by the defendants.

"On the other hand, the Court finds that the second clause of the agreement of September 1, 1924 (Exh. "J") is by itself clear. The herein defendants bound themselves therein to acknowledge the second mortgage of ₱250,000.00 of the National Bank in case said defendants sold the properties of the Mindoro Sugar Co. in which case 'provision will be made whereby the purchaser will make satisfactory arrangements for the payment of the amount of the mortgage of the Philippine National Bank.' That was a promise or conditional obligation, compliance with which depended upon a specified event: the acquisition and sale of the defendants of the properties of the debtor Mindoro Sugar Co. The defendants failed to acquire and sell said properties; for that reason the fulfillment of said obligation cannot be demanded. (See Sec. 1114 of the Civil Code)". (Record page 183).

The Supreme Court of the Philippines found the said reasoning correct. It says:

"Although it is true that the second clause of this agreement shows that the defendants recognized the mortgage in favor of the plaintiff Bank (Exh. "B") in the event that the properties of the Mindoro Sugar Company were sold by them, and that in such case they would see to it that the buyer would make satisfactory arrangements for the payment of the plaintiff Bank's mortgage indebtedness, it is nevertheless likewise true that they were not able to sell them, not even acquire them in order to be able to sell them, nor does it show that it was their intention to buy them, for the purpose of obtaining a profit in case of a resale, besides

paying off the mortgage indebtedness of the mentioned plaintiff Bank. As said by the Lower Court, the clause in question only contains a conditional acknowledgment of the plaintiff bank's mortgage and a promise or an obligation which is also conditional, and whose fulfillment depended upon a definite event, namely, the previous purchase of the properties by the defendants, and then, the sale thereof by them. In conditional obligations, the acquisition of rights just as the resolution or extinction of those acquired, will depend upon the event constituting the condition. (Art. 1114, Civil Code). It was optional for the defendants to acquire or not to acquire the properties of the Mindoro Sugar Company; and no matter how closely the terms of Exhs. "F", "G" and even "J", are scrutinized, nothing will be found therein making them obligatory. Consequently, if the acquisition was optional, the sale was also necessarily optional, because the defendants could by no means effect the sale without first acquiring thru purchase the properties, subject-matter of the sale. And let it not be said that the purchase or acquisition of said properties by the defendants was a necessary condition precedent, in view of the stipulations contained in the Deed of Trust (Exh. "A" or "1") which permit the sale without requiring the acquisition or purchase, because the defendant Philippine Trust Company participated in the execution of Exh. J. in two capacities: both as a trustee and as such Company having its own purposes, powers and obligations; and it has been seen that the second clause of Exh. J does not bind the said defendant to perform the acts therein mentioned in its capacity as trustee but in its other capacity, which is quite different." (Record pages 235-236).

OUR FUNDAMENTAL CONTENTION—THE NULLITY OF THE CONTRACT SHOULD NOT BE DEDUCED IF THERE IS A REASONABLE MEANS OF UPHOLDING ITS VALIDITY.

As may be observed, the decision of the Honorable Supreme Court of the Philippines hinges upon the argument that the purchase of the properties of the Mindoro Sugar was optional on the part of the respondents, who were the holders of the bonds and who had in their hands the life and death of the Mindoro Sugar and the control of its trustee; that it was also optional on their part to sell them afterwards; that, hence, it was optional on the part of said respondents to comply or not with the obligation they contracted of providing for the payment of the plaintiff's credit, and that, therefore, they could shirk with impunity the control which they exercised over the business and leave the plaintiff entirely helpless as regards the collection of his credit, or likewise lie back idle in the event of the sale of the Mindoro Sugar properties.

With all due respect, we humbly submit that it could not have been the intention of the parties to the contract, three well-known credit institutions in the Philippines, to enter into an agreement so ridiculously useless as that which the Philippine decision conceives. It is logical to suppose that these parties had in good faith entered into a binding contract, with the intention that the same will be carried into effect. All the circumstances and all the hypotheses ought to be construed in favor of the validity and effectivity of the contract. Only when it is reasonably impossible to arrive at this result should the nullity and inefficacy of the contract be deduced.

Petitioner also contends that when respondents deliberately placed it out of their power to comply with the agreement, they did something which is equivalent to a breach of contract and respondents are, therefore, liable for the damages incurred by petitioner.

JURISDICTION OF THIS COURT

The jurisdiction of this Honorable Court is invoked under the Act of Congress approved on August 29, 1916, otherwise known as the "Jones Law" which partly provides:

"SEC. 27. The Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands in all actions, cases, causes, or proceedings now pending therein or hereafter determined thereby x x x x in questions in which the value in controversy exceeds $25,000.00 * * *."

The Court's jurisdiction has been preserved by the Philippine Independence Act (Act of March 24, 1934, ch. 84, 48 Stat. 456, 48 U.S.C.A. par. 1231 et seq.) which provides (in sub-division 6 of Par. 7 thereof, 48 Stat. 462, 48 U.S.C.A. par. 1237) that—

"Review by the Supreme Court of the United States of cases from the Philippine Islands shall be as now provided by law * * *."

This case involves the recovery of the amount of ₱250,000.00, Phil. Cy., (equivalent to ₱125,000.00. United States Currency), as is shown by the trans-

cript of record particularly by the amended complaint (Record pages 2 & 7).

The decision of the Supreme Court of the Philippines was promulgated on May 12, 1939 (Record page 207) and final judgment was entered on December 23, 1940 (Record page 241), and exception and notice of intention to appeal for a writ of certiorari to the Supreme Court of the United States was filed on January 4, 1940. (Record page 242).

REASONS FOR GRANTING WRIT

The decision of the Supreme Court of the Philippines has departed from the accepted and applied principles and mandates of law and equity, an action which justifies the exercise of this Honorable Court's power of supervision.

As we explain more at length in the Supporting Brief, the Bank believes it is the victim of the acts and omissions of the respondents, which have all the looks of a comedy, and which the decision of the respondent Supreme Court has sanctioned, brushing aside well-known rules of law, some of them very fundamental, respecting the interpretation and enforcement of contracts.

Exhibit "J", embodying the agreements contained in Exhs. "F", "G", "I" and "I-1", clearly shows that it was broken by the respondents by action and omission, causing the petitioner to suffer damages amounting to ₱250,000.00 ($125,000.-00 U. S. Cy.), with stipulated interest and attorney's fees. (Exh. "G").

PRAYER

WHEREFORE, this Honorable Court is respectfully prayed to grant this petition for a writ of certiorari to review the decision and judgment of the Supreme Court of the Philippines to the end that the same may be reversed, and that the remedy for the wrong committed may be granted, with costs.